

**BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation

Against:

ROBERT L. GROSS, M.D.
Certificate #G-38941

Respondent.

File No: 13-92-23473

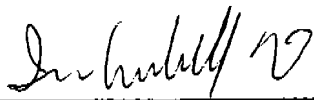
DECISION AND ORDER

The attached Stipulation and Order is hereby adopted by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in the above-entitled matter.

This Decision shall become effective on August 8, 1996.

DATED July 9, 1996.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



Ira Lubell, M.D.
Chair, Panel A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DAVID M. CARR, Deputy Attorney General
California Department of Justice
3 State Bar No. 131672
50 Fremont Street, Suite 300
4 San Francisco, California 94105-2239
Telephone: (415) 356-6376

5 Attorneys for Complainant
6

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation)
Against:)

Case No. 13-92-23473

12 **ROBERT L. GROSS, M.D.**)
13 240 Magellan Ave.)
San Francisco CA 94116)

OAH No. N9508076

14 **STIPULATED SETTLEMENT**
15 **AND**
16 **DISCIPLINARY ORDER**

Physician & Surgeon's)
Certificate No. G38941,)

16 Respondent.)
17

18 **IT IS HEREBY STIPULATED AND AGREED** by and between the
19 parties to the above-entitled proceedings that the following
20 matters are true:

21 1. An Accusation in case number 13-92-23473 was filed
22 with the Division of Medical Quality, of the Medical Board of
23 California Department of Consumer Affairs (the "Division") on
24 June 9, 1995 and is currently pending against Robert L. Gross
25 (the "respondent").

26 2. The Accusation, together with all statutorily
27 required documents, was duly served on the respondent on or about

1 June 9, 1995; Respondent filed a timely Notice of Defense
2 contesting the Accusation. A copy of Accusation No. 13-92-23473
3 is attached as Exhibit "A" and hereby incorporated by reference
4 as if fully set forth.

5 3. The Complainant, Dixon Arnett, was the Executive
6 Director of the Medical Board of California and brought this
7 action solely in his official capacity. The present Executive
8 Director of the Medical Board of California and Complainant
9 herein is Ron Joseph. The Complainant is represented by the
10 Attorney General of California, Daniel E. Lungren, by and through
11 Deputy Attorney General David M. Carr.

12 4. The respondent is represented in this matter by
13 William M. Goodman, Esq., Topel & Goodman, whose address is 832
14 Sansome St., San Francisco, California 94111.

15 5. The respondent and his attorney have fully
16 discussed the charges contained in Accusation number 13-92-23473,
17 and the respondent has been fully advised regarding his legal
18 rights and the effects of this stipulation.

19 6. At all times relevant herein, respondent has been
20 licensed by the Medical Board of California under Physician and
21 Surgeon's certificate No. G38941.

22 7. Respondent understands the nature of the charges
23 alleged in the Accusation and that, if proven at hearing, the
24 charges and allegations would constitute cause for imposing
25 discipline upon his Physician and Surgeon's certificate.
26 Respondent is fully aware of his right to a hearing on the
27 charges contained in the Accusation, his right to confront and

1 cross-examine witnesses against him, his right to the use of
2 subpoenas to compel the attendance of witnesses and the
3 production of documents in both defense and mitigation of the
4 charges, his right to reconsideration, appeal and any and all
5 other rights accorded by the California Administrative Procedure
6 Act and other applicable laws. Respondent knowingly waives each
7 of these rights.

8 8. Respondent does not admit the truth of each
9 allegation of Accusation No. 13-92-23473, but acknowledges that
10 Complainant may be able to sustain the burden of proof regarding
11 the allegations of the Accusation at a hearing before the Medical
12 Board. Respondent agrees that he has thereby subjected his
13 Physician and Surgeon's certificate to disciplinary action.
14 Respondent agrees to be bound by the Division's Disciplinary
15 Order as set forth below.

16 9. The admissions made by respondent herein are for
17 the purpose of this proceeding and any other proceedings in which
18 the Division of Medical Quality, Medical Board of California, or
19 other professional licensing agency is involved, and shall not be
20 admissible in any other criminal or civil proceedings.

21 10. Based on the foregoing admissions and stipulated
22 matters, the parties agree that the Division shall, without
23 further notice or formal proceeding, issue and enter the
24 following order:

25
26 **DISCIPLINARY ORDER**

27 **IT IS HEREBY ORDERED** that Physician and Surgeon's

1 certificate No. G38943 issued to Robert L. Gross, M.D. is
2 revoked. However, the revocation is stayed and respondent is
3 placed on probation for three years on the following terms and
4 conditions. Within 15 days after the effective date of this
5 decision the respondent shall provide the Division, or its
6 designee, proof of service that respondent has served a true copy
7 of this decision on the Chief of Staff or the Chief Executive
8 Officer at every hospital where privileges or membership are
9 extended to respondent or where respondent is employed to
10 practice medicine and on the Chief Executive Officer at every
11 insurance carrier where malpractice insurance coverage is
12 extended to respondent.

13 1. **CONTROLLED DRUGS - PARTIAL RESTRICTION** Respondent
14 shall not prescribe, administer, dispense, order, or possess any
15 controlled substances as defined by Schedule II the California
16 Uniform Controlled Substances Act. However, respondent is
17 permitted to prescribe, administer, dispense or order controlled
18 substances listed in Schedule II of the Act for in-patients in a
19 hospital setting, and not otherwise.

20 2. **PRESCRIBING PRACTICES COURSE** Respondent shall enroll
21 in a course in Prescribing Practices, approved in advance by the
22 Division or its designee, and shall successfully complete the
23 course during the first year of probation. This course will
24 serve to satisfy the awarded number of course hours toward the
25 requirement of 25 hours per annum of Continuing Medical Education
26 above the 25 hours required for re-licensure; see Condition 4.

27 3. **CONTROLLED DRUGS - MAINTAIN RECORD** Respondent shall

1 maintain a record of all controlled substances prescribed,
2 dispensed or administered by respondent during probation, showing
3 all the following: 1) the name and address of the patient, 2) the
4 date, 3) the character and quantity of controlled substances
5 involved, and 4) the indications and diagnoses for which the
6 controlled substance was furnished.

7 Respondent shall keep these records in a separate file
8 or ledger, in chronological order, and shall make them available
9 for inspection and copying by the Division or its designee, upon
10 request.

11 4. EDUCATION COURSE Within ninety (90) days of the
12 effective date of this decision, and on an annual basis
13 thereafter during the three year probationary period, respondent
14 shall submit to the Division or its designee for its prior
15 approval an educational program or course to be designated by the
16 Division, which shall not be less than 25 hours per year, for
17 each year of probation. This program shall be in addition to the
18 Continuing Medical Education requirement for re-licensure of 25
19 hours per year. Respondent shall provide proof of attendance for
20 50 hours of continuing medical education of which 25 hours were
21 in satisfaction of this condition and were approved in advance by
22 the Division or its designee.

23 5. MONITORING Within thirty (30) days of the effective
24 date of this decision, respondent shall submit to the Division or
25 its designee for its prior approval a plan of practice in which
26 respondent's practice shall be monitored by another physician in
27 respondent's field of practice, who shall provide periodic

1 reports to the Division or its designee specifically addressing
2 respondent's prescribing practices and prescription record
3 keeping.

4 If the monitor resigns or is no longer available,
5 respondent shall, within fifteen (15) days, move to have a new
6 monitor appointed, through nomination by respondent and approval
7 by the Division or its designee. Respondent may petition the
8 Board to have this condition deleted from the required conditions
9 of probation after one year of satisfactory reports to the Board.

10 5. OBEY ALL LAWS Respondent shall obey all federal,
11 state and local laws, all rules governing the practice of
12 medicine in California, and remain in full compliance with any
13 court ordered criminal probation, payments and other orders.

14 6. QUARTERLY REPORTS Respondent shall submit
15 quarterly declarations under penalty of perjury on forms provided
16 by the Division, stating whether there has been compliance with
17 all the conditions of probation.

18 7. PROBATION SURVEILLANCE PROGRAM COMPLIANCE Respondent
19 shall comply with the Division's probation surveillance program.
20 Respondent shall, at all times, keep the Division informed of his
21 addresses of business and residence which shall both serve as
22 addresses of record. Changes of such addresses shall be
23 immediately communicated in writing to the Division. Under no
24 circumstances shall a post office box serve as an address of
25 record.

26 Respondent shall also immediately inform the Division,
27 in writing, of any travel to any areas outside the jurisdiction

1 of California which lasts, or is contemplated to last, more than
2 thirty (30) days.

3 8. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS
4 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for
5 interviews with the Division, its designee or its designated
6 physician(s) upon request at various intervals and with
7 reasonable notice.

8 9. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-
9 PRACTICE In the event respondent should leave California to
10 reside or to practice outside the State or for any reason should
11 respondent stop practicing medicine in California, respondent
12 shall notify the Division or its designee in writing within ten
13 (10) days of the dates of departure and return or the dates of
14 non-practice within California. Non-practice is defined as any
15 period of time exceeding thirty days in which respondent is not
16 engaging in any activities defined in Sections 2051 and 2052 of
17 the Business and Professions Code. All time spent in an
18 intensive training program approved by the Division or its
19 designee shall be considered as time spent in the practice of
20 medicine. Periods of temporary or permanent residence or
21 practice outside California or of non-practice within California,
22 as defined in this condition, will not apply to the reduction of
23 the probationary period.

24 10. COMPLETION OF PROBATION Upon successful completion
25 of probation, respondent's certificate shall be fully restored.

26 11. VIOLATION OF PROBATION If respondent violates
27 probation in any respect, the Division, after giving respondent

1 notice and the opportunity to be heard, may revoke probation and
2 carry out the disciplinary order that was stayed. If an
3 accusation or petition to revoke probation is filed against
4 respondent during probation, the Division shall have continuing
5 jurisdiction until the matter is final, and the period of
6 probation shall be extended until the matter is final.

7 12. COST RECOVERY The respondent is hereby ordered to
8 reimburse the Division the amount of \$3,900.00 for its
9 investigative and prosecution costs. Semi-annual payments of
10 \$650.00 may be made over the three year period of probation until
11 the total of \$3,900 is paid. Failure to reimburse the Division's
12 cost of investigation and prosecution shall constitute a
13 violation of the probation order, unless the Division agrees in
14 writing to payment by an installment plan because of financial
15 hardship. The filing of bankruptcy by the respondent shall not
16 relieve the respondent of his responsibility to reimburse the
17 Division for its investigative and prosecution costs.

18 13. PROBATION COSTS Respondent shall pay the costs
19 associated with probation monitoring each and every year of
20 probation, which are currently set at \$2,304.00, but may be
21 adjusted on an annual basis. Such costs shall be payable to the
22 Division of Medical Quality and delivered to the designated
23 probation surveillance monitor at the beginning of each calendar
24 year. Failure to pay costs within 30 days of the due date shall
25 constitute a violation of probation.

26 14. LICENSE SURRENDER Following the effective date of
27 this decision, if respondent ceases practicing due to retirement,

1 health reasons or is otherwise unable to satisfy the terms and
2 conditions of probation, respondent may voluntarily tender his
3 certificate to the Board. The Division reserves the right to
4 evaluate the respondent's request and to exercise its discretion
5 whether to grant the request, or to take any other action deemed
6 appropriate and reasonable under the circumstances. Upon formal
7 acceptance of the tendered license, respondent will no longer be
8 subject to the terms and conditions of probation.

9 CONTINGENCY

10 This stipulation shall be subject to the approval of
11 the Division. Respondent understands and agrees that Board staff
12 and counsel for complainant may communicate directly with the
13 Division regarding this stipulation and settlement, without
14 notice to or participation by respondent or his counsel. If the
15 Division fails to adopt this stipulation as its Order, the
16 stipulation shall be of no force or effect, it shall be
17 inadmissible in any legal action between the parties, and the
18 Division shall not be disqualified from further action in this
19 matter by virtue of its consideration of this stipulation.

20 ACCEPTANCE

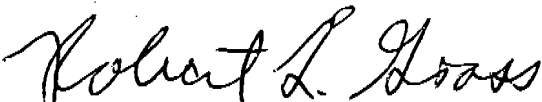
21 I have read the above Stipulated Settlement and
22 Disciplinary Order. I have fully discussed the terms and
23 conditions and other matters contained therein with my attorney.
24 I understand the effect this Stipulated Settlement and
25 Disciplinary Order will have on my Physician and Surgeon's
26 certificate and agree to be bound thereby. I enter this

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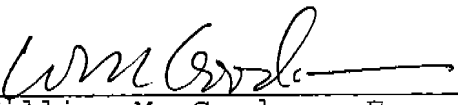
stipulation knowingly and voluntarily.

DATED: 6/4/96.


ROBERT L. GROSS, M.D.
Respondent

I have read the above Stipulated Settlement and
Disciplinary Order and approve of it as to form and content. I
have fully discussed the terms and conditions and other matters
therein with respondent Robert L. Gross, M.D.

DATED: 6/4/96.



William M. Goodman, Esq.
Topel & Goodman
Attorneys for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary
Order is hereby respectfully submitted for the consideration of
the Division of Medical Quality, Medical Board of California,
Department of Consumer Affairs.

DATED: May 20, 1996.

DANIEL E. LUNGREN, Attorney General
of the State of California


DAVID M. CARR
Deputy Attorney General

Attorneys for Complainant

EXHIBIT A

DANIEL E. LUNGREN, Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT L. GROSS, M.D.

240 Magellan Avenue
San Francisco, CA 94116

Physician's and Surgeon's Certificate No. G38941

Respondent.

No. 13-92-23473

ACCUSATION

Complainant Dixon Arnett alleges as follows:

1. Complainant is the Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California (hereinafter referred to as the "Board") and makes and files this Accusation solely in his official capacity and not otherwise.

2. On or about March 19, 1979, the Board issued to respondent Robert L. Gross, M.D. (hereinafter referred to as "respondent") Physician's and Surgeon's Certificate No. G38941. Said certificate is presently in good standing with an

1 expiration date of November 30, 1996. There is no Board record of prior disciplinary
2 action having been taken against respondent in the State of California. Respondent is
3 not licensed to supervise a physician's assistant.

4 5 STATUTES

6 3. Section 2001 of the Business and Professions Code^{1/} provides for
7 the existence of the Board.

8 4. Section 2003 provides for the existence of the Division of Medical
9 Quality (hereinafter referred to as the "Division") within the Board.

10 5. Section 2004 provides, inter alia, that the Division is responsible
11 for the administration and hearing of disciplinary actions involving enforcement of the
12 Medical Practice Act (§ 2000 et seq.) and the carrying out of disciplinary action
13 appropriate to findings made by a medical quality review committee, the division, or an
14 administrative law judge with respect to the quality of medical practice carried out by
15 physician and surgeon certificate holders.

16 6. Section 2229 subdivision (a) provides that protection of the public
17 shall be the highest priority for the Division, a medical quality review committee, and
18 administrative law judges in exercising disciplinary authority.

19 7. Sections 2220, 2234, and 2227 together provide that the Division
20 shall take disciplinary action against the holder of a physician's and surgeon's certificate
21 who is guilty of unprofessional conduct.

22 8. Section 2234 provides, in part, as follows:

23 "The Division of Medical Quality shall take action
24 against any licensee who is charged with unprofessional
25 conduct. In addition to other provisions of this article,
unprofessional conduct includes, but is not limited to the
following:

26
27 1. All statutory references are to the Business and Professions Code unless
otherwise indicated.

1 "(a) Violating or attempting to violate, directly, or
2 assisting in or abetting the violation of, or conspiring to
3 violate, any provision of this chapter.

4 "(b) Gross negligence.

5 "(c) Repeated negligent acts."

6 9. Section 2238 states that a violation of any federal statute or federal
7 regulation or and statutes or regulations of this state regulating dangerous drugs or
8 controlled substances constitutes unprofessional conduct.

9 10. Section 4211 provides, in pertinent part, the following definition of
10 a "dangerous drug":

11 " 'Dangerous drug' means any drug unsafe for self-medication . . . and
12 includes the following: . . .

13 * * *

14 "(a) Any drug which bears the legend: 'Caution: federal law prohibits
15 dispensing without prescription . . . ' or other words of similar import."

16 * * *

17 "(c) Any other drug or device that by federal and state law can be
18 lawfully dispensed only on prescription pursuant to Section
19 4240. . . ."

20 11. Section 2242(a) states, in pertinent part, that prescribing dangerous
21 drugs without a good faith prior examination and medical indication therefor,
22 constitutes unprofessional conduct.

23 12. Section 725 states, in pertinent part, that "repeated acts of clearly
24 excessive prescribing or administering of drugs or treatment" constitutes unprofessional
25 conduct for a physician and surgeon.

26 COST RECOVERY

27 13. Section 125.3 provides, in pertinent part, that in any order issued
 in resolution of a disciplinary proceeding before any board within the California

1 Department of Consumer Affairs, the Board may request the administrative law judge
2 to direct a licensee found to have committed a violation/violations of the licensing act
3 to pay a sum not to exceed the reasonable costs of the investigation and enforcement
4 of the case.

5 6 CALIFORNIA CONTROLLED SUBSTANCES ACT

7 14. California Health and Safety Code^{2/} section 11007 defines a
8 "controlled substance", in pertinent part, as a drug included in Schedules I through V,
9 inclusive, pursuant to Health and Safety Code sections 110054 through 11058.

10 15. Health and Safety Code section 11055 sets forth Schedule II
11 controlled substances.

12 16. Health and Safety Code section 11056 sets forth Schedule III
13 controlled substances.

14 17. Health and Safety Code section 11057 sets forth Schedule IV
15 controlled substances.

16 18. Health and Safety Code section 11210 states, in pertinent part, that
17 a physician shall prescribe, furnish, or administer controlled substances only in such
18 quantity and for such length of time as are reasonably necessary.

19 19. Health and Safety Code section 11153 states, in part, that a
20 prescription for a controlled substance shall only be issued for a legitimate medical
21 purpose by an individual practitioner acting in the usual course of his or her
22 professional practice.

23 20. Health and Safety Code section 11171 states that no person shall
24 prescribe, administer, or furnish a controlled substance except under the conditions and
25 in the manner provided by this Division.

26
27 2. Hereinafter referred to as the "Health and Safety Code".

CONTROLLED SUBSTANCES INVOLVED

21. Hydrocodone bitartrate and acetaminophen (aka Anexsia or Hydrocet) is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e).

22. Isollyl is the generic name for Fiorinal (butalbital, aspirin and caffeine) and is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e).

23. Percocet (oxycodone and acetaminophen) is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(1)(N).

24. Percodan (oxycodone and aspirin) is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(1)(N).

25. Phentermine Hydrochloride (aka Fastin) is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule IV controlled substance as defined in Health and Safety Code section 11057.

26. Propoxyphene hydrochloride (aka Darvon) is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule IV controlled substance as defined in Health and Safety Code section 11057.

27. Tylenol #3 (codeine phosphate 30mg and acetaminophen 300mg) is a dangerous drug, as defined by section 4211 of the Business and Professions Code, and is a Schedule III controlled substance as defined in Health and Safety Code section 11056.

28. Tylenol #4 (codeine phosphate 60mg and acetaminophen 300mg) is a dangerous drug, as defined by section 4211 of the Business and Professions Code,

1 and is a Schedule III controlled substance as defined in Health and Safety Code section
2 11056.

3
4 FIRST CAUSE FOR DISCIPLINARY ACTION

5 29. In or about March 1990, respondent, a specialist in internal
6 medicine, terminated his private practice located at 909 Hyde Street in San Francisco
7 and arranged with another physician, Dr. Apter, to treat respondent's patients.

8 30. After terminating his private practice in 1990 until approximately
9 November 1991, respondent was a partner of and did medical research for a
10 corporation named Thymax.

11 31. On or about June 12, 1990, respondent received a delivery of
12 controlled substances at his home, 1428 Portola Drive, San Francisco, from Rugby
13 Laboratories consisting of 6,200 dosage units of controlled substances.

14 32. On or about May 10, 1991, respondent received a delivery of
15 controlled substances at his home, 1428 Portola Drive, San Francisco, from Rugby
16 Laboratories consisting of 1,700 dosage units of controlled substances.

17 33. On or about March 9, 1992, respondent received a delivery of
18 controlled substances at his home, 1428 Portola Drive, San Francisco, from Rugby
19 Laboratories consisting of 3,000 dosage units of controlled substances.

20 34. Respondent also ordered and received various shipments of
21 prescription drugs and controlled substances at Thymax which he kept in his office and
22 to which other company officers and employees had access. Respondent was not the
23 company's designated physician.

24 35. In or about 1990 and 1991, respondent dispensed controlled
25 substances and other prescription drugs to Thymax employees and to several former
26 patients without a written dispensing inventory and without maintaining patient medical
27 records.

1 36. On or about December 21, 1992, investigators with the Drug
2 Enforcement Administration ("DEA") confiscated seven (7) prescription bottles of
3 controlled substances from respondent's residence. According to the label information
4 on the bottles, at least 25,000 dosage units were missing and unaccounted for from the
5 bottles. Also confiscated were 29 triplicate prescription forms used by respondent.

6 37. Respondent admitted dispensing controlled substances from the
7 stock maintained at his home without keeping written records of the type and quantity
8 dispensed, to whom and for what medical indication and without any other written
9 documentation.

10 38. Respondent's conduct as set forth in paragraphs 29 through 37
11 hereinabove constitutes general unprofessional conduct and is cause for disciplinary
12 action pursuant to Section 2234 of the Business and Professions Code.

13 **SECOND CAUSE FOR DISCIPLINARY ACTION**

14 39. Respondent's conduct as set forth in paragraphs 29 through 37
15 hereinabove constitutes gross negligence and is cause for disciplinary action pursuant to
16 Section 2234(b) of the Business and Professions Code.

17 **THIRD CAUSE FOR DISCIPLINARY ACTION**

18 40. Respondent's conduct as set forth in paragraphs 29 through 37
19 hereinabove constitutes repeated negligent acts and is cause for disciplinary action
20 pursuant to Section 2234(c) of the Business and Professions Code.

21 **FOURTH CAUSE FOR DISCIPLINARY ACTION**

22 41. Respondent's conduct as set forth in paragraphs 29 through 37
23 hereinabove constitutes prescribing, dispensing, or furnishing dangerous drugs as defined
24 in Section 4211 without a good faith prior examination and medical indication therefor
25 and is grounds for disciplinary action pursuant to Section 2234 in conjunction with
26 Section 2242(a).

27 ///

1 FIFTH CAUSE FOR DISCIPLINARY ACTION

2 42. Respondent's conduct as set forth in paragraphs 29 through 37
3 hereinabove constitutes prescribing, dispensing, or furnishing controlled substances
4 without a legitimate medical purpose and therefore is cause for disciplinary action
5 pursuant to Business and Professions Code section 2234 in conjunction with section
6 2238 and section 11153, subdivision (a), of the Health and Safety Code.

7 SIXTH CAUSE FOR DISCIPLINARY ACTION

8 43. Upon termination of his private practice, respondent kept the
9 records of former patients who did not seek treatment with Dr. Apter and who did not
10 request a transfer of their medical records. As of December 1992, respondent did not
11 have an inventory of said patients' medical records and did not know where said
12 patients' medical records were located.

13 44. Upon commencement of his work with Thymax, respondent
14 transferred his patients' medical records to Thymax and put them in a storage area.
15 After respondent's departure from Thymax in or about the fall of 1991, respondent did
16 not have access to the company's premises nor to said medical records. In or about
17 December, 1991, Thymax declared Chapter 11 bankruptcy. As of December 1992,
18 respondent had no knowledge as to the whereabouts of his patients' medical records
19 and no knowledge of who was in possession of said records.

20 45. Respondent's conduct as set forth in paragraphs 29, 30, 35, 37, 43
21 and 44 hereinabove constitutes general unprofessional conduct and is cause for
22 disciplinary action pursuant to section 2234 of the Business and Professions Code.

23 SEVENTH CAUSE FOR DISCIPLINARY ACTION

24 46. Respondent's conduct as set forth in paragraphs 29, 30, 35, 37, 43
25 and 44 hereinabove constitutes gross negligence and is cause for disciplinary action
26 pursuant to section 2234(b).

27 ///

1 EIGHTH CAUSE FOR DISCIPLINARY ACTION

2 47. Respondent's conduct as set forth in paragraphs 29, 30, 35, 37, 43
3 and 44 hereinabove constitutes repeated negligent acts and is cause for disciplinary
4 action pursuant to section 2234(c).

5 NINTH CAUSE FOR DISCIPLINARY ACTION

6 48. In or about September 1987, respondent began to treat patient
7 J.E.^{3/}, who lived in Santa Fe, New Mexico, until moving to Carmel, California, in about
8 January 1988.

9 49. During the year 1990, respondent saw patient once for examination
10 in San Francisco before respondent terminated his private practice in or about March
11 1990. Despite the closing of his private practice, respondent saw patient J.E. again in
12 July 1990 for examination while at an art gallery in San Francisco. These are the only
13 two documented visits with respondent by patient J.E. in 1990.

14 50. In 1990, respondent prescribed and mailed prescriptions from San
15 Francisco for the following Schedule II controlled substances (#730 dosage units) to
16 patient J.E. in Carmel:

<u>Date</u>	<u>Drug/Amount</u>	<u>Prescription No.</u>
1/04/90	Percocet-5/ #30	---
2/24/90	Percocet/ #100	---
4/16/90	Percocet/ #100	---
5/22/90	Percocet-5/ #100	0267698
6/26/90	Percocet/ #100	---
9/10/90	Percocet-5/ #200	0267701
11/15/90	Percocet-5/ #100	0267702

26
27 3. To respect the patient's privacy right, the patient's name will be furnished to
respondent at the time of discovery in this case.

Respondent prescribed these controlled substances without conducting a good faith physical examination of the patient and without documentation of a legitimate medical purpose therefor.

51. During the year 1991, respondent saw patient once for examination in a hotel room in San Francisco on or about May 9, 1991. This is the only documented visit with respondent by patient J.E. in 1991. Respondent's only other documented contact with patient J.E. in 1991 was a telephone conversation on or about September 9, 1991.

52. In 1991, respondent prescribed and/or mailed prescriptions from San Francisco for the following Schedule II controlled substances (#1000 dosage units) for patient J.E. in Carmel:

<u>Date</u>	<u>Drug/Amount</u>	<u>Prescription No.</u>
1/29/91	Percocet-5/ #100	0267705
3/06/91	Percocet-5/ #100	0267707
5/09/91	Percocet-5/ #100	---
6/14/91	Percocet-5/ #100	0267708
7/17/91	Percocet-5/ #100	0267709
8/09/91	Percocet-5/ #100	0267710
9/09/91	Percocet-5/ #100	0267712
10/09/91	Percocet-5/ #100	0267713
11/13/91	Percocet-5/ #100	0267721
12/11/91	Percocet-5/ #100	---

Respondent prescribed these controlled substances without conducting a good faith physical examination of the patient and without documentation of a legitimate medical purpose therefor.

53. During the year 1992, respondent saw and examined patient J.E. only once -- at an art gallery in San Francisco on or about August 7, 1992. Respondent's only other documented contacts with patient J.E. in 1992 were two telephone conversations: one on May 25 and one on December 29, 1992.

54. In 1992, respondent prescribed and/or mailed from San Francisco the following Schedule II controlled substances (#1300 dosage units) for patient J.E. in Carmel:

<u>Date</u>	<u>Drug/Amount</u>	<u>Prescription No.</u>
1/08/92	Percocet-5/ #100	0267724
2/21/92	Percocet-5/ #100	0888379
3/20/92	Percocet-5/ #100	0888380
4/23/92	Percocet-5/ #100	0888381
5/14/92	Percocet-5/ #100	0888382
6/15/92	Percocet-5/ #100	0888383
7/10/92	Percocet-5/ #100	0888384
8/07/92	Percodan/ #100	0888385
9/03/92	Percodan/ #100	0888386
9/30/92	Percodan/ #100	0888387
11/02/92	Percodan/ #100	0888388
11/24/92	Percodan/ #100	0888389
12/18/92	Percodan/ #100	0888390

Respondent prescribed these controlled substances without conducting a good faith physical examination of the patient and without documentation of a legitimate medical purpose therefor.

55. In 1992, in addition to the Schedule II substances listed in paragraph 54 hereinabove, respondent prescribed to patient J.E. the following additional controlled substances/dangerous drugs: (a) #2300 dosage units of

1 Acetaminophen w/ codeine (aka Tylenol #4), a Schedule III drug; (b) #1400 dosage
2 units of Soma/Carisoprodol 350mg, a sedative/muscle relaxant; and (c) #300 dosage
3 units of Reglan, a drug known to have possible additive side effects when given with
4 alcohol, sedatives, hypnotics, narcotics or tranquilizers.

5 56. In 1992, patient J.E. was also prescribed by her local physician in
6 Carmel/Monterey, among other drugs, #1070 dosage units of chloral hydrate, a
7 sedative, which is a Schedule IV controlled substance.

8 57. From January 1, 1993 to December 15, 1993, respondent
9 prescribed the following Schedule II controlled substances (#500 dosage units) for
10 patient J.E. in Carmel:

11	<u>Date</u>	<u>Drug/Amount</u>	<u>Pharmacy Prescrip.No.</u>
12	1/10/93	Percodan/ #100	547265
13	1/25/93	Percodan/ #100	547601
14	2/08/93	Percodan/ #100	547914
15	2/20/93	Percodan/ #100	548189
16	3/04/93	Percodan/ #100	548460

17 Respondent prescribed these controlled substances without conducting a good faith
18 physical examination of the patient and/or without documentation of a legitimate
19 medical purpose therefor.

20 58. In 1993, in addition to the Schedule II substances listed in
21 paragraph 57 above, respondent prescribed to patient J.E. the following additional
22 controlled substances/dangerous drugs: (a) #3200 dosage units of Reglan, a drug known
23 to have additive side effects when given with alcohol, sedatives, hypnotics, narcotics or
24 tranquilizers; (b) #3100 dosage units of Acetaminophen w/ codeine (aka Tylenol #4), a
25 Schedule III controlled substance and narcotic drug; (c) #2100 dosage units of Buspar,
26 a sedative/tranquilizer; (d) #600 dosage units of Esgic, a CNS depressant, (e) #100

1 dosage units of Soma/Carisoprodol 350mg, a sedative/muscle relaxant; and (f) #46
2 dosage units of Imitrex injections 6mg for relief of severe headaches.

3 59. From January 1, 1993 to December 15, 1993, patient J.E. also was
4 prescribed by her local physician in Monterey, among other drugs: #1200 dosage units
5 of chloral hydrate, a sedative; #360 dosage units of Vicodin, a Schedule III controlled
6 substance and narcotic analgesic; and #39 dosage units of Imitrex injection 6mg.

7 60. Respondent's conduct as set forth in paragraphs 29 through 30 and
8 48 through 59 hereinabove constitutes prescribing, dispensing, or furnishing dangerous
9 drugs as defined in Section 4211 without a good faith prior examination and/or without
10 a medical indication therefor and is grounds for disciplinary action pursuant to Section
11 2234 in conjunction with Section 2242(a).

12 TENTH CAUSE FOR DISCIPLINARY ACTION

13 61. Respondent's conduct as set forth in paragraphs 29 through 30 and
14 48 through 59 hereinabove constitutes general unprofessional conduct and is cause for
15 disciplinary action pursuant to Section 2234 of the Business and Professions Code.

16 ELEVENTH CAUSE FOR DISCIPLINARY ACTION

17 62. Respondent's conduct as set forth in paragraphs 29 through 30 and
18 48 through 59 hereinabove constitutes gross negligence and is cause for disciplinary
19 action pursuant to Section 2234(b).

20 TWELFTH CAUSE FOR DISCIPLINARY ACTION

21 63. Respondent's conduct as set forth in paragraphs 29 through 30 and
22 48 through 59 hereinabove constitutes repeated negligent acts and is cause for
23 disciplinary action pursuant to Section 2234(c).

24 THIRTEENTH CAUSE FOR DISCIPLINARY ACTION

25 64. Respondent's conduct as set forth in paragraphs 29 through 30 and
26 48 through 59 hereinabove constitutes unprofessional conduct because of repeated acts
27 of clearly excessive prescribing or administering of drugs or treatment as determined by

1 the standard of the local community of licensees pursuant to Section 725 and is
2 therefore cause for disciplinary action pursuant to Section 2234.

3 **FOURTEENTH CAUSE FOR DISCIPLINARY ACTION**

4 65. Respondent's conduct as set forth in paragraphs 29 through 30 and
5 48 through 59 hereinabove was beyond the authorized scope and constitutes the
6 prescribing of controlled substances in excess of such quantity and length of time as is
7 reasonably necessary and therefore is cause for disciplinary action pursuant to Section
8 2234 in conjunction with Section 2238 and Section 11210 of the Health and Safety
9 Code.

10 **FIFTEENTH CAUSE FOR DISCIPLINARY ACTION**

11 66. Respondent's conduct as set forth in paragraphs 29 through 30 and
12 48 through 59 hereinabove constitutes prescribing, dispensing, or furnishing controlled
13 substances without a legitimate medical purpose and therefore is cause for disciplinary
14 action pursuant to Section 2234 in conjunction with Section 2238 and Section 11153,
15 subdivision (a), of the Health and Safety Code.

16 **SIXTEENTH CAUSE FOR DISCIPLINARY ACTION**

17 67. Respondent's overall conduct as set forth in paragraphs 29 through
18 59 hereinabove constitutes general unprofessional conduct and is cause for disciplinary
19 action pursuant to Section 2234 of the Business and Professions Code.

20 **SEVENTEENTH CAUSE FOR DISCIPLINARY ACTION**

21 68. Respondent's overall conduct as set forth in paragraphs 29 through
22 59 hereinabove constitutes gross negligence and is cause for disciplinary action pursuant
23 to Section 2234(b).

24 **EIGHTEENTH CAUSE FOR DISCIPLINARY ACTION**

25 69. Respondent's overall conduct as set forth in paragraphs 29 through
26 59 hereinabove constitutes repeated negligent acts and is cause for disciplinary action
27 pursuant to Section 2234(c).


WHEREFORE, complainant requests that a hearing be held and that thereafter the Board issue an order:

1. Revoking or suspending respondent's physician and surgeon's certificate number G38941, heretofore issued to respondent Robert L. Gross, M.D.;

2. Directing respondent to pay to the Board a reasonable sum for its investigative and enforcement costs of this action; and

3. Taking such other and further action as is deemed just and proper to protect the public health, safety, and welfare.

DATED: June 9, 1995


DIXON ARNETT
Executive Director
Medical Board of California
State of California

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12-11
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
12-11-1964